

Ramkishore Vs. Emperor

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Court : Allahabad

Decided On : Jul-18-1947

Reported in : AIR1948All79

Appellant : Ramkishore

Respondent : Emperor

Judgement :

ORDER

Malik, J.

1. The applicant has been convicted under Section 13 of the Hoarding and Profiteering Prevention Ordinance for having refused to sell woolen cloth to one Ghulam Ahmad. The shop is carried on in the name of Messrs. Ram Gopal Lakshmi Narain and is at Sambhal. According to Ghulam Ahmad, he went to the shop on 29th December 1945, and wanted some woolen material but Ram Kishore who was at the shop refused to sell it to him.

2. Lakshmi Narain, Jagdish Saran and Ram Kishore were all prosecuted for the contravention of the Ordinance. Lakshmi Narain's defence was that he was no longer connected with the shop and was carrying on the business of an importer at Moradabad. Jagdish Saran admitted that he was the proprietor of the shop but pleaded that at the time of the occurrence he was not present. The defence of Ram Kishore was that he had not refused to sell the material to Ghulam Ahmad

but as Ghulam Ahmad wanted to take the cloth on approval Ram Kishore had refused to give it to him. Ram Kishore produced two witnesses, Ram Saran and Akhtar Mohammad. The learned Magistrate acquitted Lakshmi Narain and Jagdish Saran but convicted Ram Kishore.

3. The learned Magistrate believed the evidence of the witnesses for the prosecution that Ram Kishore had refused to sell the cloth though it was available at the shop and disbelieved his defence that he had not refused to sell but had merely refused to give it on approval.

4. A revision was filed against the conviction of Ram Kishore and the learned Sessions Judge has made this reference on the ground that Ram Kishore was merely a munim and could not, therefore, be convicted under this Ordinance. Section 9 of the Ordinance provides:

No dealer or producer shall, unless previously authorized to do so by the Controller General or other officer empowered in this behalf by the Central or the Provincial Government, without sufficient cause refuse to sell ' to any person any article within the limits as to quantity imposed by this Ordinance.

The word 'dealer' is defined in Section 2(b) of the Ordinance as meaning 'a person carrying on the business of selling any article, whether wholesale or retail.' Ordinarily a person who carries on the business not on his own behalf but as a servant of someone else would not be included in this definition. In the case of a company or other body corporate Rule 122 of the Defence of India Rules provides that every director, manager, secretary or other officer or agent thereof shall, unless he proves that the contravention took place without his knowledge or that he exercised all due diligence to prevent such contravention, be deemed to be guilty of such contravention. Where, however, the dealer is not a company or a body corporate within the meaning of Rule 122, a servant who contravenes on behalf of his master any provision of any Notification or Order under the Defence of India Rules can only be held guilty if he is made liable under such Order or he may be held guilty of abetment for such contravention. I have held in several cases that if a master puts a servant in charge of the business to act for him and the servant commits the breach the master would be liable and he cannot escape

the responsibility by pleading that he was not there, unless he could prove that the servant had acted in his own interest and against the instructions of the master. Under the Hoarding and Profiteering Prevention Ordinance the dealer or the producer has been made punishable for refusal to sell and a servant can, therefore, only be held guilty for abetment of the offence.

5. The applicant in this case was not charged with abetment but for the substantial offence. Under Section 225, Criminal P.C., this Court is not bound to interfere for a defect in the charge unless it is satisfied that it has resulted in the miscarriage of justice. I am fully satisfied that there has been no miscarriage of justice. It is true that the applicant was described as a munim, but then it was never suggested on his behalf that his business was only to write the account-books. There is nothing to show that the shop of Messrs. Ram Gopal Lakshmi Narain had several servants, one of whom had the duty of exclusively writing the account-books. In the absence of the master the applicant probably did the entire work in the shop. At any rate, there was no such plea on his behalf in the Court of the Magistrate. It is only because he was described as a munim in the complaint that the learned Sessions Judge has made this reference. I see no reason to interfere with the conviction and the sentence passed against the applicant. I, therefore, reject this reference.